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Sometimes, when municipal governments attempt to introduce performing animal by-laws in Canada, they encounter resistance because of what happened in Toronto more than 10 years ago, when a performing animal by-law was established in the city. This resistance is based on a misunderstanding about what really happened in Toronto.

What Happened

In 1992, the City of Toronto amended an existing by-law so that it would prohibit certain wild animals from being kept within the city limits. This change meant that wild animals would be prohibited from performing in circuses and traveling shows in the city of Toronto. The by-law was subsequently challenged on numerous grounds by the corporations which own Ringling Bros. and Barnum & Bailey Circus, Garden Bros. Circus and Toronto's Skydome. The first court to hear the case was a 3-member panel of the Divisional Court of Ontario which unanimously dismissed the challenge and upheld the by-law.

The same corporations then appealed to the Ontario Court of Appeal, which granted their appeal for very specific reasons relating to the particular wording of the legislation which then governed municipal by-law making powers in Toronto. At that time, there were two separate legal entities known as "Toronto". One was the Municipality and the other was the City. Each had its

own specific powers with respect to writing municipal legislation.

The Law

At that time, section 210(1) of the *Municipal Act*, under which Toronto's by-law had been passed, read as follows:

210. By-laws may be passed by the councils of local municipalities:

ANIMALS AND BIRDS

for prohibiting or regulating the keeping of animals or any class thereof within the municipality or defined areas thereof and for restricting, within the municipality or defined areas thereof, the number of animals or any class thereof that may be kept by any person, or that may be kept in or about any dwelling unit or class of dwelling unit as defined in the by-law.

The Court of Appeal ruled that section 210 of the



Municipal Act did not give a municipality the power to prohibit or regulate circuses and traveling shows that use performing animals.

The reason for their ruling was that municipal jurisdictions do not have the authority to regulate circuses, because at that time, the power resided elsewhere. Section 236 of the *Municipal Act* read as follows:

236. A council of a local municipality may pass by-laws:

[continued on reverse]





What Happened in Toronto?

The Law [continued]

7. for prohibiting or regulating and licensing exhibitions of wax works, menageries, circus-riding, and other like shows usually exhibited by showpersons,...

At the time of the Court of Appeal decision, s. 236 had indicated that:

236. By-laws may be passed by the councils of towns, townships and villages and of cities having a population of less than 100,000 and by Police Services Boards of cities having a population of not less than 100,000..." (emphasis added)

How this Applies to Performing Animal By-Laws Today

The Court of Appeal decided that the power to prohibit or regulate circuses under the specific section (par. 7 of s. 236) of the *Municipal Act*, as it was then worded, rested with the Municipality of Metropolitan Toronto, which had the power to pass by-laws under s. 236, as opposed to the City of Toronto, which had power to pass by-laws under s.210. Therefore, the amended by-

law was beyond the specific and narrow legislative authority of the City of Toronto and had to be struck down for that reason.

However, section 236 of the *Municipal Act* was subsequently amended to allow by-laws to be passed by a "council of a local municipality".

This meant that municipal councils could, according to s.236 of The *Municipal Act*, pass by-laws that would prohibit performing animals. Correspondence from the Minister of Municipal Affairs at the time confirmed this to be true.

A new *Municipal Act* was introduced in 2003 which gives municipalities the power to enact bylaws that would prohibit wild and exotic performing animals. See enclosed document: **Prohibiting Wild and Exotic Animal Acts**, for more information.

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